

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JASPER WASHINGTON,

Plaintiff,

v.

RANDALL E. BRITTON, et al.,

Defendants.

No. 09-MC-123

MEMORANDUM/ORDER

Plaintiff has filed an “Application for Leave to Proceed In Forma Pauperis on Independent Action” and an Independent Action seeking relief from alleged fraud on the court pursuant to *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944). In his application, plaintiff asserts that the prosecutor in his state criminal trial committed fraud on the Philadelphia County Court of Common Pleas by “knowingly and recklessly participat[ing] in presenting false testimony” and by “ignor[ing] the results” of DNA tests. Indep. Action, at 2-3.

The Third Circuit has recently summarily affirmed the dismissal of an attempt to use *Hazel-Atlas* to overturn a state conviction on the ground that it is “unaware of any power that a federal court has to overturn a state criminal conviction obtained by fraud, outside of power authorized by statute; i.e. through a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254.” *Wells v. King*, No. 09-1842, 2009 WL 2386664, at *1 (3d Cir. Aug. 5, 2009) (emphasis omitted); *see also Williams v. Vaughn*, No. 02-cv-1077, 2005

WL 3348863, at *2 (E.D. Pa. Dec. 8, 2005) (holding that a “district court cannot reconsider state court proceedings under *Hazel-Atlas*” when the plaintiff “only asserts that there was fraud upon the state court”). Plaintiff’s action, which only alleges that there was fraud on Philadelphia County Court of Common Pleas, may therefore not proceed. An appropriate order follows.